



Costs Decision

Site visit made on 10 February 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Costs application in relation to APP/Y3940/W/22/3303889

11 Quemerford, Wiltshire, Calne SN11 0AR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Alistair Fenwick, Box Property Group Ltd, against Wiltshire Council.
 - The appeal was against the non-determination of an application under Section 78 of the Town and Country Planning Act 1990 (as amended) for 'The erection of a new dwellinghouse'.
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Decision

1. The application for an award of costs is refused.

Preliminary Matter

2. The applicant seeks a full award of costs and has highlighted that the interest on the purchase price of the property and loss of market value on the development are sought to be re-couped.
3. However, the Planning Practice Guidance (PPG) is quite clear that costs that are unrelated to the appeal are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. As such, should costs have been awarded, these would only relate to unnecessary or wasted expense related to the appeal process.

Reasons

4. The PPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
5. The appellant contends that an award of costs is justified on the grounds of non-determination of the application and due to a lack of dialogue from the local planning authority (LPA) during the application process.
6. The PPG further advises that if it is clear that the LPA fail to determine an application within the time limits, it should give the applicant a proper explanation as to why there is a delay in determination. Furthermore, in an appeal against non-determination, the LPA should explain its reasons for not reaching a decision within the relevant time limit.

7. The LPA acknowledges that it was unable to determine the application within the statutory time limit, citing that a lack of resources contributed to the delay and level of communication the applicant received. However, the LPA contests that it failed to engage with the applicant, highlighting that it responded to a request for a meeting on site by explaining the resourcing issues that the Council faced.
8. The applicant suggests that there was a wider lack of engagement from the Council from then on after, however, has not provided any specific details (e.g. communications that went unanswered). It is also claimed that the applicant was unaware that the Council's resourcing issues was specifically affecting his own application.
9. I consider it good practice for LPAs to explicitly inform an applicant when there will be delays in processing of an application(s) and the reasons for the delays. It is also clear that the applicant should not have to chase the LPA to issue its decision. However, I am mindful that numerous LPAs are facing similar resourcing difficulties alongside high volumes of work. As such, whilst the actions of the Council in this instance may be frustrating to the applicant, it is not necessarily symptomatic of unreasonable behaviour on the Council's part.
10. Furthermore, the LPA has prepared an appeal statement that has set out the reasons why it would have refused the application. The statement is detailed and precisely sets out the relevant policies of the development plan that the proposal would conflict with. It also pays due regard to national planning policy. As such, even if the application had been determined in a timely manner by the LPA, an appeal would still have been necessary for the proposed development.
11. As will be seen from my appeal decision, I have found that the LPA had reasonable concerns regarding the impact of the proposed development on the character and appearance of the area which justified dismissal of the appeal.
12. It therefore follows that I cannot agree unnecessary expense during the appeal process has been demonstrated, because of unreasonable behaviour by the LPA. An award for costs is therefore not justified.

Lewis Condé

INSPECTOR